

FREEDOM COURT REPORTING

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ALABAMA</p> <p>3 MIDDLE DIVISION</p> <p>4</p> <p>5 CASE NUMBER: CV 2:06-CV-496-MEF</p> <p>6 U.S. BEVERAGE, INC.,</p> <p>7 Plaintiff(s),</p> <p>8 vs.</p> <p>9 JOHN BUSTER WALKER, II; TRIDENT</p> <p>10 MARKETING, INC; and A, B, C, and D,</p> <p>11 fictitious defendants whose names are</p> <p>12 otherwise unknown but which will be</p> <p>13 supplemented by amendment,</p> <p>14 Defendant(s).</p> <p>15</p> <p>16 STIPULATION</p> <p>17 IT IS STIPULATED AND AGREED</p> <p>18 by and between the parties through</p> <p>19 their respective counsel, that the</p> <p>20 deposition of JOHN B. WALKER, II may</p> <p>21 be taken before TAMIE J. STORY,</p> <p>22 Commissioner, at the offices of Raymond</p> <p>23 L. Jackson, Jr., 660 North College</p>	<p>1 INDEX</p> <p>2 EXAMINATION BY: PAGE NUMBER:</p> <p>3 Mr. Gill 8</p> <p>4</p> <p>5 EXHIBITS:</p> <p>6 Plaintiffs 1 - 37</p> <p>7 Minutes</p> <p>8 Plaintiffs 2 - 39</p> <p>9 Minutes</p> <p>10 Plaintiffs 3 - 41</p> <p>11 Purchase Agreement</p> <p>12 Plaintiffs 4 - 43</p> <p>13 Buy/Sell Agreement</p> <p>14 Plaintiffs 5 - 44</p> <p>15 Non-compete Agreement</p> <p>16 Plaintiffs 6 - 49</p> <p>17 Tax Records</p> <p>18 Plaintiffs 7 - 106</p> <p>19 Outline</p> <p>20 Plaintiffs 8 - 122</p> <p>21 Bylaws</p> <p>22 Plaintiffs 9 - 126</p> <p>23 Resolution</p>
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<p>1 Street, Suite D, Auburn, Alabama, on</p> <p>2 the 14th day of September, 2006.</p> <p>3 IT IS FURTHER STIPULATED AND</p> <p>4 AGREED that the signature to and the</p> <p>5 reading of the deposition by the witness</p> <p>6 is waived, the deposition to have the</p> <p>7 same force and effect as if full</p> <p>8 compliance had been had with all laws and</p> <p>9 rules of Court relating to the taking of</p> <p>10 depositions.</p> <p>11 IT IS FURTHER STIPULATED AND</p> <p>12 AGREED that it shall not be necessary for</p> <p>13 any objections to be made by counsel to</p> <p>14 any questions except as to form or</p> <p>15 leading questions, and that counsel for</p> <p>16 the parties may make objections and</p> <p>17 assign grounds at the time of the trial,</p> <p>18 or at the time said deposition is offered</p> <p>19 in evidence, or prior thereto.</p> <p>20 IT IS FURTHER STIPULATED AND</p> <p>21 AGREED that the notice of filing of the</p> <p>22 deposition by the Commissioner is</p> <p>23 waived.</p>	<p>1 EXHIBITS:</p> <p>2 Plaintiffs 10 - 139</p> <p>3 Advertisement</p> <p>4 Plaintiffs 11 - 151</p> <p>5 USPTO Search</p> <p>6 Plaintiffs 12 - 184</p> <p>7 Letter</p> <p>8 Plaintiffs 13 - 245</p> <p>9 E-mail</p> <p>10 Plaintiffs 14 - 256</p> <p>11 E-mail</p> <p>12 Plaintiffs 15 - 290</p> <p>13 Fax</p> <p>14 Plaintiffs 16 - 305</p> <p>15 Proposal</p> <p>16 Plaintiffs 17 - 323</p> <p>17 Letter</p> <p>18 Plaintiffs 18 - 341</p> <p>19 Letter</p> <p>20 Plaintiffs 19 - 358</p> <p>21 Letter</p> <p>22 Plaintiffs 20 - 399</p> <p>23 Statement</p>

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<p style="text-align: right;">Page 5</p> <p>1 EXHIBITS</p> <p>2 Plaintiff's 21 - 409</p> <p>3 Memo</p> <p>4 Plaintiff's 22 - 417</p> <p>5 Memo</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. RAYMOND L. JACKSON, JR.,</p> <p>2 Attorney at Law, 660 North College</p> <p>3 Street, Suite D, Auburn, Alabama 36830,</p> <p>4 appearing on behalf of the Defendants.</p> <p>5 ALSO PRESENT:</p> <p>6 Mr. Thomas Clark, Mr. Grady</p> <p>7 Kittrell, and Mr. Clifton Tunnell.</p> <p>8</p> <p>9 *****</p> <p>10</p> <p>11 I, TAMIE J. STORY, a Court</p> <p>12 Reporter of Birmingham, Alabama, acting</p> <p>13 as Commissioner, certify that on this</p> <p>14 date, as provided by the Federal Rules</p> <p>15 of Civil Procedure and the foregoing</p> <p>16 stipulation of counsel, there came</p> <p>17 before me at the offices of Raymond L.</p> <p>18 Jackson, Jr., 660 North College Street,</p> <p>19 Suite D, Auburn, Alabama, beginning at</p> <p>20 9:00 a.m., JOHN B. WALKER, II, in the</p> <p>21 above cause, for oral examination,</p> <p>22 whereupon the following proceedings</p> <p>23 were had:</p>
<p style="text-align: right;">Page 6</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ALABAMA</p> <p>3 MIDDLE DIVISION</p> <p>4</p> <p>5 CASE NUMBER: CV 2:06-CV-496-MEF</p> <p>6</p> <p>7 U.S. BEVERAGE, INC.,</p> <p>8 Plaintiff(s),</p> <p>9 vs.</p> <p>10 JOHN BUSTER WALKER, II; TRIDENT</p> <p>11 MARKETING, INC; and A, B, C, and D,</p> <p>12 fictitious defendants whose names are</p> <p>13 otherwise unknown but which will be</p> <p>14 supplemented by amendment,</p> <p>15 Defendant(s).</p> <p>16 BEFORE:</p> <p>17 TAMIE J. STORY, Commissioner</p> <p>18 APPEARANCES:</p> <p>19 COPELAND, FRANCO, SCREWS &</p> <p>20 GILL, P.A., by Mr. Nelson Gill, 444</p> <p>21 South Perry Street, Montgomery, Alabama</p> <p>22 36104, appearing on behalf of the</p> <p>23 Plaintiff.</p>	<p style="text-align: right;">Page 8</p> <p>1 JOHN B. WALKER, II,</p> <p>2 being first duly sworn, was examined</p> <p>3 and testified as follows:</p> <p>4</p> <p>5 THE REPORTER: Usual</p> <p>6 stipulations?</p> <p>7 MR. GILL: Yes.</p> <p>8 MR. JACKSON: Yes.</p> <p>9</p> <p>10 EXAMINATION BY MR. GILL:</p> <p>11 Q. Can you state your full</p> <p>12 name for me, please?</p> <p>13 A. John Buster Walker, II.</p> <p>14 Q. Mr. Walker, my name is</p> <p>15 Nelson Gill, and we just met briefly</p> <p>16 beforehand. And let me ask you first:</p> <p>17 Have you ever had your deposition taken</p> <p>18 before?</p> <p>19 A. No, I have not.</p> <p>20 Q. Well, just a brief</p> <p>21 explanation of what's going to happen.</p> <p>22 I'm going to ask you some questions and</p> <p>23 if you don't understand, I want you to,</p>

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<p style="text-align: right;">Page 13</p> <p>1 relative tree.</p> <p>2 MR. JACKSON: Right.</p> <p>3 Q. Can you give me a brief</p> <p>4 overview of your education?</p> <p>5 A. I have a B.S. in science</p> <p>6 from Troy State University, and I</p> <p>7 graduated from high school in --</p> <p>8 Northmore High School in 19 -- excuse</p> <p>9 me, in 1987. It's in Robbins, North</p> <p>10 Carolina.</p> <p>11 Q. Do you have any other</p> <p>12 degrees?</p> <p>13 A. No, I don't.</p> <p>14 Q. Any licenses?</p> <p>15 A. Outside of a driver's</p> <p>16 license, no.</p> <p>17 Q. But you're not a</p> <p>18 licensed --</p> <p>19 A. No.</p> <p>20 Q. -- real estate person or</p> <p>21 anything like that?</p> <p>22 A. No, sir, I'm not.</p> <p>23 Q. Starting post-college, can</p>	<p style="text-align: right;">Page 15</p> <p>1 company called Flowers Baking Company</p> <p>2 out of Columbus, Georgia. We moved to</p> <p>3 Phenix City, and I went to work with</p> <p>4 Flowers Baking Company as a route</p> <p>5 driver.</p> <p>6 Q. You say a route driver?</p> <p>7 A. That's correct.</p> <p>8 Q. Were you delivering bread?</p> <p>9 A. Yes, that's it.</p> <p>10 Q. Okay. How long did you</p> <p>11 work for Flowers Baking?</p> <p>12 A. It's tough to say exactly,</p> <p>13 but probably in the neighborhood of two</p> <p>14 years.</p> <p>15 Q. Okay. Is that roughly 2005</p> <p>16 -- I mean, 1995?</p> <p>17 A. That's correct, yes, sir.</p> <p>18 Q. What did you do after</p> <p>19 leaving Flowers Baking?</p> <p>20 A. I started a company called</p> <p>21 Tropical Perfections.</p> <p>22 Q. In 1995?</p> <p>23 A. That's correct.</p>
<p style="text-align: right;">Page 14</p> <p>1 you tell me a little bit about your</p> <p>2 employment, your work history?</p> <p>3 A. Well, post-college -- I</p> <p>4 didn't graduate from college until</p> <p>5 early 2000. I mean, I worked and I</p> <p>6 went to college at night.</p> <p>7 Q. Let me go back. That's</p> <p>8 probably a bad question.</p> <p>9 A. Okay.</p> <p>10 Q. I don't want high school</p> <p>11 jobs where you're just doing an odd and</p> <p>12 end. I mean, tell me what you would</p> <p>13 consider a real job was.</p> <p>14 A. I was in the military for</p> <p>15 four years.</p> <p>16 Q. What did you do in the</p> <p>17 military?</p> <p>18 A. I was a Navy Seal.</p> <p>19 Q. What time frame was that?</p> <p>20 A. From 1989 until 1993.</p> <p>21 Q. What did you do after the</p> <p>22 military?</p> <p>23 A. I went to work with a</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Where was that company</p> <p>2 located?</p> <p>3 A. Here in Phenix City.</p> <p>4 Q. What kind of company was</p> <p>5 it in 1995?</p> <p>6 A. It was basically a slush</p> <p>7 company.</p> <p>8 Q. Explain what you mean by a</p> <p>9 slush company to me.</p> <p>10 A. We bought and sold slush</p> <p>11 machines and sold them to schools or</p> <p>12 convenience stores and -- put them in</p> <p>13 schools and sold them slush products,</p> <p>14 juice mixes.</p> <p>15 Q. Now, you say "slush," and I</p> <p>16 think I know what that means. How</p> <p>17 would you define it to somebody that</p> <p>18 doesn't have any idea?</p> <p>19 A. A frozen beverage product.</p> <p>20 Q. A frozen beverage product?</p> <p>21 A. Correct.</p> <p>22 Q. Now, going back, what kind</p> <p>23 of company -- I may not have phrased</p>

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